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ABSTRACT

A feminist perspective can be valuable in analysis of hate speech, but the analysis must connect with other social, political, and cultural perspectives such as race, class, sexual orientation, unity, and diversity. Hate speech has emerged as a contemporary political issue and is particularly visible on college and university campuses. Judicial response to speech codes, including those on university campuses, has been that such codes are overbroad and a violation of the First Amendment. Five categories of unprotected speech are: clear and present danger; obscenity; commercial speech; libel; and "fighting words" doctrine. Only the "fighting words" doctrine may possibly apply to hate speech. Some scholars have argued that hate speech violates the rights of equal protection and opportunity guaranteed by the Fourteenth Amendment. Feminist legal theory attempts to reveal the discriminatory basis of legal rules and practices otherwise assumed to be neutral or objective, and it offers a diversity of perspectives on the meaning of legal concepts and practices. While feminist legal theory speaks of the multiple truths that may be attached to legal rationales, it is not simply a resurrected legal realism. Feminist theory's intellectual tradition and critical analytical practices go to the core of the philosophical underpinning of the debates about free speech that set up hate speech arguments. What feminist analysis has to offer is the interdisciplinary practice to infuse discussions of hate speech with numerous perspectives of social and political life. (Contains 102 endnotes.) (RS)

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Is There Need For A Feminist Perspective On Hate Speech?

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Is There Need For A Feminist Perspective on Hate Speech?

Introduction

In the last several years intolerance of certain races and religions, sexual orientation, and women has increased.[1] Anti-gay violence has risen 31 percent nationally in 1991 over 1990.[2] In 1990, President Bush signed into law the Hate Crimes Act which, among other provisions, established a Commission on Racially Motivated Violence.[3] Physical harassment has certainly been part of this growing intolerance, but a common manifestation also has been hate speech, verbal harassment focusing on race, religion, gender, sexual orientation, disability and other immutable characteristics.

The currently influential academic works on hate speech are those by Toni Massaro,[4] Mari Matsuda,[5] Charles Lawrence[6] and Richard Delgado.[7] All have made arguments in support of various forms of speech codes or in support of legal action in response to hate speech. All have infused their work with emotional force through the use of anecdotes, at times from personal experience as victims of hateful speech. Two of these scholars are women, all are minority, and all analyses of hate speech come from the perspective of race often employing critical race theory as a tool of analysis. A thread running through the racist speech literature argues that it is impossible to fully understand the harmful nature of such speech -- the psychic damage, its ability to silence the victim, the re-affirmation of the victim's second class status -- if one is not a minority. The complexity of the hate speech issue is revealed by the powerful role minority experiences play.

Critical race theory is a powerful position from which to critique the value of protecting hate speech. It often includes some mention of hateful speech based on gender, and sexual orientation, but the centrality of gender is not part of critical race

theory and, thus, it is monist and fails to directly address the perspectives of women - minority or nonminority - as the victims of gendered hate speech.

Discussions about hate speech center around racist speech and, to a large degree, neglect an independent analysis of its use in the vilification of women. Are the concerns of women already addressed under the concerns of racial minorities? Is this an issue that warrants a distinct feminist analysis? In an attempt to respond to these questions, I will present an overview of how hate speech has emerged on the public scene, discuss the ways it has been addressed in the courts, how it fits under the First Amendment and rationales for regulation presented by various scholars. I will argue that many of women's concerns are similar to minority concerns, but that problems arise when collapsing both into a single critique of hate speech. Therefore, I see value in feminist analysis but it necessarily must connect with other social, political and cultural perspectives such as race, class, sexual orientation, unity, and diversity. I will conclude by offering for consideration what I see as the necessary components of an evolving feminist analysis of hate speech.

Emergence of Hate Speech as a Contemporary Political Issue

Hostility towards minorities, gays, lesbians and women has become increasingly prevalent in American society. One highly publicized incident in St. Paul, Minnesota eventually made its way to the U.S. Supreme Court.[8] On June 21, 1990, several teenagers burned a cross inside the fenced yard of a black family in St. Paul. The teenagers simply could have been charged with trespassing, but instead, prosecutors charged the defendents under a St. Paul Bias- Motivated Crime Ordinance, ordinance which stated

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable

grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.[9]

The FBI recently released its first hate crime report as required by the Hate Crimes Statistics Act of 1990. In 1991, racial bias prompted 62.3 percent (2,963 of 4,558 crimes) of the hate crimes nationally. Blacks were the main target accounting for 35.5 percent of the racially motivated crimes. Nineteen percent of the incidents were directed at whites, 19 percent prompted by religious bias (mostly anti-Jewish) and nine percent directed at sexual orientation (almost exclusively at homosexuals).[10] It is worth noting that the most prevalant hate-related crime was intimidation (34%).[11] Recently, in Colorado, hostility toward gays and lesbians has increased with the passage of Amendment Two which prohibits legislation or court cases protecting Colorado homosexuals against discrimination of any kind and repeals existing gay rights legislation in Denver, Boulder and Aspen.[12] Similar laws are under discussion in 12 states including Michigan, Ohio and California. Maine Gov. John McKernan vetoed a anti-discrimination bill that won legislative approval after 18 years of lobbying by gay rights activists. He said he did not support the "extension of civil rights protection in employment and housing based on sexual orientation."[13]

Hate speech has been particularly visible on college and university campuses. Anti-Semitic incidents have increased for the fifth straight year. In 1991, anti-Semitic incidents increased 12 percent to 112 incidents on 60 campuses. Melvin Salberg, national chairman of B'nai B'rith Anit-Defamation League, said that at Queens College in New York City, for example, "Dead cats stolen from the animal science laboratory were dropped in toilets in another university building with a warning written on the wall: 'we're going to to do Jews what we did to the cats.'"[14] In fact, campus intolerance may be more widespread and entrenched than the number of reported cases of hate speech and

harassment would indicate. A survey of 128 colleges and universities revealed that 57 percent of the responding institutions admitted a problem with intolerance on campus and 59 percent noted that hate-motivated incidents had occurred in the past 18 months.[15] Many of these schools continue to operate in a "culture of denial" while others have instituted limited programs to combat bigotry. According to the ACLU, however, over 100 institutions have instituted speech codes allowing punishment of racist, sexist and other forms of hate speech.[16]

There has been what amounts to a polarization over the appropriateness of administrative action in speech issues. Even the ACLU, a steadfast supporter of the First Amendment since the McCarthy era, has faced division on this issue. Beginning with the Skokie case, which resulted in mass resignations from the ACLU after the national committee decided to defend the National Socialist Party of America's right to demonstrate in Skokie,[17] some members continue to defend restricting hateful speech under limited circumstances as a protection of Fourteenth Amendment rights. For example, the Northern and Southern California affiliates of the ACLU have created their own model for speech codes.[18] With their combined membership amounting to 63,000 of the national ACLU membership of 280,000, they represent a powerful division within the civil liberties organization.[19]

Judicial Responses to Speech Codes.

However, the national position of the ACLU, consistent with the position on the Skokie case, has remained opposed to any restriction of hate speech. Their position has been upheld in the courts. Through an albeit convoluted process, the courts finally did uphold the neo-nazi party's right to demonstrate in Skokie (They never did exercise this right). In the more recent St. Paul cross-burning case, the court held that the ordinance, which stated "whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or nazi swastika,

which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor," was overbroad[20] and a violation of the First Amendment.[21]

The courts have ruled similarly in the case of university speech codes. In 1989, for example, a University of Michigan graduate student, with the help of the ACLU, brought a suit against the university.[22] Under the newly enacted speech codes this student felt he might be sanctioned for discussing controversial theories of biopsychology that posit biologically-based differences between sexes and races. The University of Wisconsin also faced a legal challenge to a their speech code.[23] In both cases the courts struck down the speech codes as being overbroad in scope and, thus, in violation of the First Amendment.

In June 1990, Stanford University adopted a speech code after considerable heated debate.[24] In attempting "to clarify the point at which protected free expression ends and prohibited discriminatory harassment begins,"[25] the code allows punishment of speech that "is intended to insult or stigmatize" on the basis of several personal characteristics; "is addressed directly to the individual or individuals whom it insults or stigmatizes; and makes use of insulting or 'fighting' words or non-verbal symbols."[26] The Stanford code remains in effect as do codes instituted at many private and public universities and which are typified by the Michigan and Wisconsin regulations. Charles Lawrence and Toni Massaro support the Stanford code because it is a tightly worded, narrowly-defined restriction on only the most severe forms of hate speech.

Some suggest that the ruling in the St. Paul cross-burning case will void speech codes at public universities. However, even after the St. Paul decision, the University of Wisconsin drafted another, more narrowly-defined, speech code. It was, nevertheless, dropped in the Fall of 1992 without challenge.[27] Given the decision in the St. Paul case,

and at University of Michigan and University of Wisconsin, the future of university speech codes remains somewhat unclear.

First Amendment Rationales for Punishing Hate Speech

One way to rationalize the regulation of hate speech is to link it to a category of currently unprotected speech. Five general categories of unprotected speech exist and are worth a brief description in an effort to understand the scope of the hate speech argument and how, in practice, there is little hope of regulation under the current interpretations of the First Amendment. One category, the "fighting words" doctrine, may possibly - though not yet successfully - apply to hate speech.

1) Clear and present danger. Arising out of litigation related to the Espionage Act of 1917, Justice Holmes, in a U.S. Supreme Court decision, said unprotected speech consists of "words used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the evils that Congress has a right to prevent."[28] Clear and present danger is defined as where "immediately serious violence is expected or is advocated or past conduct furnishes reason to believe such advocacy is contemplated"[29],

2) Obscenity. As a result of *Miller v. California* the test for obscenity is almost insurmountable. It is defined as words "appealing to the prurient interest" that "describes in a patently offensive way, sexual conduct" and "whether the work taken as a whole, lacks serious literary, artistic, political, or scientific value."[30]

3) Commercial speech. Commercial speech garners somewhat less protection than other forms of speech. Commercial speech must concern lawful activity and not be misleading. Also, commercial speech can be regulated if there is a compelling government interest and the regulation of speech directly advances that government interest. For example, if evidence supported the claim that smoking was bad for children's health and that children were particularly susceptible to the persuasive

techniques of magazine advertising, the government could make the claim that it had a compelling interest in protecting the health of children and that banning cigarette advertising from children's magazines would directly further that interest.

4) Libel. The type of libel considered a possible avenue for protection against hate speech is group libel. Robert Post identifies two ways of approaching a group libel action for hateful expression.[31] First is the traditional form of group libel. The difficulty in developing a case for group libel lies in identification. Identification requires that the plaintiff "show that the statement was understood to refer to, though not necessarily aimed at, the plaintiff."[32] This is not a problem if the plaintiff is named or clearly identified. It becomes more difficult in the case of group libel. Courts have generally dismissed cases of plaintiffs, if members of large group and bringing suit for group defamation. While there is no magic number, groups of more than 20 have had little success in group libel suits.[33] As such, it is an extremely difficult defense to mount for race and gender motivated hate speech. While the case upholding a group libel statute, *Beauharnais v. Illinois* has never been overturned,[34] only a handful of states retain group libel statutes on their books.[35] As Nadine Strossen argues, the decision in *Beauharnais* was a "5-4 decision issued almost forty years ago, at a relatively early point in the Court's developing free speech jurisprudence. *Beauharnais* is widely assumed no longer to be good law in light of the Court's subsequent speech-protective decisions on related issues, notably its holdings that strictly limit individual defamation actions so as not to chill free speech."[36] Another form of libel arises from the "more contemporary understanding of racism as 'the structural subordination of a group based on an idea of racial inferiority'."[37] This type of group libel would be directed only at historically oppressed groups. It faces the same challenges under existing law as the traditional understanding of group libel.

5) "Fighting words" doctrine. This is the category of unprotected speech most often invoked to argue for the regulation of hate speech. It includes words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[38]

No court has formally overturned the doctrine but, at the same time, the "fighting words" doctrine has never successfully been invoked to win a U.S. Supreme Court case since its conception in 1942.[39] Subsequent decisions have narrowed the definition of the "fighting words" doctrine such that the first part of definition, "words by which their very utterance inflict injury" such that since *Gooding v. Wilson*,[40] courts have disregarded this first prong.[41] Because of this more narrow definition, some say that the "fighting words" doctrine has incorporated the clear and present danger test.[42] Additionally, the Court has held that the expressive nature of speech is protected,[43] and that the offensiveness of speech does not necessarily remove it from constitutional protection.[44] Thus, some scholars argue that the "fighting words" doctrine is dead.[45]

Other Approaches to Hate Speech

The very fact that the courts developed categories of unprotected speech clearly indicates that the protection of free speech is not "absolute."[46] Instead the courts have tried to balance free speech against other rights, primarily that of equality, but also the kinds of competing rights and interests that arise in the above-mentioned categories of unprotected speech. In light of this tradition of balancing rights, some scholars have argued that hate speech violates the rights of equal protection and opportunity guaranteed by the Fourteenth Amendment. As Richard Delgado has stated, the struggle over the traditions of the First Amendment and the issues of civil rights and the history of racism evoke "competing narratives."[47] By this Delgado means that when people take different positions on the balance between the First and Fourteenth Amendments, they have different understandings of what is at stake in regulating hate speech. So far, these "balancing rights" arguments have provided fodder for heated discussion about hate speech but have not proven effective rationales in the courts. This weighting of free speech rights over equality has important implications for feminism which I will discuss shortly.

Delgado also has proposed that an independent tort for racial slurs be permitted for victims of hate speech.[48] Drawing upon black history and social science data to reveal the broader effects of racial epithets on minorities, he makes a compelling argument that a new tort punishing face-to-face racial insults is within the acceptable limits of current tort law.[49]

Mari Matsuda moves beyond Delgado's proposed, tort and expands the punitive possibilities to include "formal criminal and administrative sanctions"[50] to redress insulting language. She argues, "Tolerance of hate speech is not tolerance borne by the community at large. Rather, it is a psychic tax imposed on those least able to pay."[51] The consequences of hate speech, she says, should be punished as any harm to an individual is punished. She identifies three characteristics of racist speech: 1) the message is of racial inferiority; 2) the message is directed against a historically oppressed group, and 3) the message is persecutorial, hateful and degrading.[52] What separates Matsuda's analysis is that she incorporates the historical differences in racial power into her criteria for restricted speech. Hypothetically, a white male could seek punitive measures as the victim of hateful speech under Delgado's tort action or under any of the university speech codes mentioned thus far. However, under Matsuda's criteria a white male, never having been part of a historically oppressed racial group, could not be a "victim" of hate speech and could not seek punitive action.

Charles Lawrence proposes two methods of regulating hate speech. The first addresses face-to-face epithets. He supports "narrowly drafted provisions aimed at racist speech that results in direct, immediate, and substantial injury."[53] Face-to-face insults are undeserving of protection because the injurious impact of racial insults is like a "slap in the face.[54] The injury is instantaneous. There is neither an opportunity for intermediary reflection on the idea conveyed nor an opportunity for responsive speech."[55] Racial insults do not foster more speech (generally considered a valuable reason for protecting speech); they function "as a preemptive strike."[56] The intent of racial insults is not to

"discover truth or initiate dialogue but to injure the victim."[57] Lawrence also argues that response to verbal attacks is usually inadequate because of unequal status in society. As Lawrence suggests, "This is particularly true when the message and meaning of the epithet resonates with beliefs widely held in society....The racist name-caller is accompanied by a cultural chorus of equally demeaning speech and symbols."[58]

Lawrence believes that protection against racial epithets should move beyond face-to-face encounters. He advocates the "resurrection" of group libel "in which the victim is a captive audience and the injury is experienced by all members of a racial group who are forced to hear or see these words; the insulting words, in effect are aimed at the entire group."[59] Lawrence uses *Brown v. Board of Education*[60] to support his argument for establishing group libel for hate speech. *Brown* speaks to the "injury inflicted by the racist message of segregation;"[61] it acknowledges reputational injury, and recognizes group defamation ("the message of segregation was stigmatizing to black children").[62] In the end, Lawrence embraces the Stanford University speech code as a regulation of hate speech that "violates neither first amendment precedent or principle,"[63] though he would like to see it expanded to include group libel.

Toni Massaro also supports the Stanford speech code. She argues that if one is not limited to a conservative interpretation of case law, "even free speech principles, coupled with principles of equality as expressed in *Brown v. Board of Education*, indicate that hate speech regulation is, or should be, constitutional."[64] Massaro disagrees with Lawrence over the benefits of permitting group libel. She argues that slurs directed at an audience are more "attentuated."[65] She is concerned that group libel may perpetuate stereotypes that are often "reductive and degrading."[66] Massaro diverges from many other writers over the role of the "educational mission" of the university in confronting hate speech. She approves of the Stanford code's emphasis on equal access to education and its downplay of the "inculcation authority of universities and colleges."[67] To emphasize education over punitive measures is to shift the burden of balancing competing

claims of "equality and expressive autonomy"[68] from legislators or disciplinary bodies to educators.

Omission of a Feminist Analysis

To summarize, attempts to rationalize the regulation of hate speech have taken two general forms that are often interwoven in the same arguments. First, many argue that hate speech may be restricted within current judicial practices (such as balancing rights) and the generally understood and accepted exceptions to protected expression (such as the "fighting words" doctrine). Second, scholars supporting restrictions on hate speech make the argument from the perspective of critical race theory.

It seems likely that feminist theory has not been applied to analyses of hate speech.[69] The "core" works on hate speech, emerging from critical race scholars, do not incorporate feminist concerns or methods of analysis in any formal, explicit sense. But the absence of a feminist critique of hate speech seems strange given the growing body of literature on feminist legal theory. For more than a decade, feminist legal thought has informed theoretical legal debates,[70] and I think it is important to describe the premises and explain why it stands apart from other methods.

Feminist Theory

A natural starting point for considering questions of law and is through the established work in feminist legal theory. Many of the ideas that apply to questions of law and legal rights, draw on more general theoretical concepts that infuse feminist scholarship across disciplines. Thus, it is easy to move through different categorizations of feminist scholarship be it feminist political philosophy, feminist literary theory, feminist social relations theory as well as feminist legal theory.

As with feminist scholarship however, feminist legal theory is by no means a coherent, unified set of assumptions, premises, values and practices. Yet there is some

common ground. All approaches attempt to reveal the discriminatory basis of legal rules and practices otherwise assumed to be neutral or objective[71] by deconstructing a patriarchal legal system where a male point of view is the standard for point of "viewlessness"[72] or purported objectivity. As with feminist work in social relations, feminist lefal theory "identifies hidden assumptions about the norm -- the male norm -- at work in prevailing theories about the world and richly conveys the relationships between knower and known, theory and context, parts and wholes, and self and other which often lie buried in the usual understandings."[73]

Feminist legal theory also offers a diversity of perspectives on the meaning of legal concepts and practices. Initially, much of the feminist scholarship focused on equal employment issues and the problematic nature of "equality" as a judicial concept.[74] Feminist legal theorists continue to debate the validity of "equal" rights[75] versus "special" rights,[76] to deconstruct the conditions under which males and females are treated similarly or differently,[77] and to judge whether differences are sex-based or socially constructed. While the positions over these issues may seem incompatible, it is not necessary to polarize these positions. There is value in seeing these perspectives as more fluid, existing, at times, in varying degrees of tension; at other times, the themes connect in meaningful, revealing ways that enhance the depth of analysis and the power of a feminist position on questions of law. Martha Minow offers an explanation for the seemingly dichotomous positioning of the equal rights/special rights or sameness/difference debates.

> [T]he inconsistencies lie in a world and set of symbolic constructions that have simultaneously used men as the norm and demeaned any departure from the norm; hence, feminism demands a dual strategy. First, feminists challenge the assumption of female inferiority: the belief that women fall too short of the unstated male norm to enjoy male privileges and that women's own traits make male privileges inappropriate for them. Second, feminists protest the assumption of separate but equal spheres that has

> characterized social and political thought since the mid-nineteenth century."[78]

Minow warns that a greater concern than the tensions between these positions is the possibility of over-simplifying the variety within positions. It is here that the door opens to analyses of religion, class, ethnicity, race and political viewpoints as part of gender.

Early on in the feminist movement, analyses of women's subordination did not go beyond setting up a critique of "woman" as a singular concept compared to "man" as a singular construct. In additionally to fueling the essentialist position about the nature of male and female, this approach completely neglected the experience of minority women. As such it remained an inaccurate and incomplete critique of the state of women in the world. As Chandra Talpade Mohanty states,

> What is problematical about this kind of use of "women" as a group, as a stable category of analysis, is that it assumes an ahistorical, universal unity between women based on a generalized notion of their subordination. Instead of analytically *demonstrating* the production of women as socioeconomic political groups within particular local contexts, this analytical move limits the definition of the female subject to gender identity, completely bypassing social class and ethnic identities. What characteriszes women as a group is their gender (sociologically, not necessarily biologically, defined) over and above everything else, indicating a monolithic notion of sexual difference. Because women are thus constituted as a coherent group, sexual difference becomes coterminous with female subordination, and power is automatically defined in binary terms: people who have it (read: men), and people who do not (read: women). Men exploit, women are exploited. Such simplistic formulations are historically reductive; they are also ineffectual in designing strategies to combat oppressions. All they do is reinforce binary divisions between men and women.[79]

Feminist scholars now look at the intersections of gender with other social, cultural, economic, and biological identities. These investigations face the challenge of understanding the implications of both recognizing the increasingly complex layers that make an individual identity and, at the same time, overcome the tendencies that turn the seemingly endless layers of difference into only divergent political energy, thus undermining the search to find some common linkages that can facilitate dialogue and even coalition-building. Elizabeth Spelman demonstrates the "problems of exclusion" inherent in a gendered analysis that simply set up male as the category of critique and does not incorporate the systems of power and exclusion within the category of female.[80] Racial and class difference between women can be as dramatic and tension-filled as differences between male and female. Spelman further cautions against the misconceptions that can arise from simply identifying the experience of black women, for example, by looking at the experience of women and the experience of blacks. She writes, "additive analyses of identity and of oppression can work against an understanding of the relations between gender and other elements of identity, between sexism and other forms of oppression."[81] An "add and stir" approach such as this does not recognize even deeper levels of variation among black women and also does not recognize that the experiences of being a black woman are qualitatively different than the summed experiences of "woman" and "black".

Feminism offers a critique of the idea of autonomous individuality and the way this idea infuses economic and political theory. These combined notions of autonomy and indivudalism rest on particular conceptions of public life and "independent man rather than private and often dependent, or interconnected woman."[82] The individual, instead of the social relations between individuals, is at the center of the conservative liberal interpretation of the meaning of free speech under the First Amendment.[83] It is an individual right that doesn't acknowledge that meaning is made in the relationship, not in the "relator" or the "relatee." In the relationship between males and females, blacks and

whites, white females and black females, homosexuals and heterosexuals, there are differentiations in power and the dominant becomes the standard by which the "other" is defined. Difference in power to define means differences in the power to control meaning-making. Speech is not an individual experience, a right that is freely held at the level of autonomous individuality. Speech is meaning-making; it defines; it labels; it differentiates power; it is the relationship between individuals; it is power.

While feminist legal theory speaks of the multiple truths that may be attached to legal rationales, it is not simply a resurrected legal realism. Legal realism focuses on the coercive tendencies of "free contract." Legal realists argue that when an employer and employee contract for laborer for certain hours of work and under certain conditions the labor is not entering into a free contract. Legal realists argue that this is not a "free exchange because of the preexisting economic status of the parties."[84] Legal realists also argue that protecting the right to free contract results in the infringement of other rights. They do not see the distinction between the public and private sector or between governmental action or inaction as a justification for economic status.[85] Finally these scholars argue that one cannot "disregard the effect of economic status on the exercise of economic rights, and that neither the existing distribution of economic power nor the effect of that distribution on economic bargains [are] pre-political."[86] J.M. Balkin has applied legal realism to the free speech and suggests that the same arguments apply. While he discussions the practical function of money as speech[87] he also aligns his argument with Catharine MacKinnon's views on pornography. He suggests that from a legal realist perspective, the lack of protest by women is a "'lack of bargaining power' created by the dominant male ideology."[88] Additionally, when the state protects the free speech rights of racists it "affirms that the rights of minorities to be free from certain forms of racial oppression do not count."[89] Feminist analysis goes beyond legal realism in that it moves beyond the abstracted economic analyses to the lived experience and the real implications of concrete action and reaction. As one legal scholar writes, feminist

legal jurisprudence "bring[s] home its implications."[90] It relies on a concrete universality rooted in real life experience rather than the abstract universality of traditional legal thought. Feminist legal theory looks to the "significance of the context and particularities" instead of trusting "general rules abstracted from context."[91]

Granted, as a theoretical tool, feminist legal theory holds some conceptions of law in common with the critical legal studies movement out of which emerged critical race theory. Both incorporate the concept of indeterminacy -- the belief that "legal and judicial reasoning never has only 'one right answer,' but many among which the judge or other legal actor may choose in accord with self or class interest."[92] Both question the interests brought to standard legal analysis. In both cases, traditional liberal legal thought is revealed as a mask for ideologically situated legal institutions, whether the ideology is economic or gendered. Under the rubric of rationality, reason, and the ultimate compatibility of individual and social interests, economic interests of those in economic control are preserved, favored and perpetuated. The gendered nature of legal practice is diffused, or if necessary, marginalized under the barrage of legal traditions, of which most notable is "equality under the law."

The differences between feminist theory and critical legal studies, however, reveal the weakness of the latter as a method for critiquing gendered hate speech. According to Catharine MacKinnon, "[t]he lack of centrality of a critique of gender to this group's critique of law and society (indeed its lack of encounter with the real world in general) makes this school less useful to theory than it might otherwise be."[93] As with the development of critical race theory as a separate approach to account for the weaknesses in critical legal studies, feminist legal theory also cannot be effectively subsumed by the critical legal studies movement.

The Need to Incorporate Feminist Theory Into Debates About Hate Speech

Feminist theory has critiqued many of the premises and assumptions of liberal philosophy. Some feminist scholars have found modern liberal society to be deeply gender structured.[94] The liberal tradition fails to recognize any systemic, inherent oppression in liberal society or in the way society articulates the value of free speech. The continued protection of hate speech, constructed from arguments rooted in a liberal tradition of free speech, has implications for women because it serves to mask a set of gendered assumptions about free speech. Free speech is supported by symbols and sets of beliefs about the nature of the democratic process that are so powerful that, while the articulation of free speech rights emerged in a traditional liberal framework, its ideology has crossed most political boundaries and is at home, for example, in most theories of the Left that make efforts to expose issues of gender or racial inequities. The Left, while critical of parts of liberal political philosophy, does not look at the prevailing understanding of free speech as part of that tradition. The Left is concerned that restriction of one type of speech will lead to restrictions of other types of speech -- namely theirs. But free speech is not an ahistorical, objective, universal concept. Free speech is a construct of the American liberal tradition. It takes shape through certain assumptions about the existence of a "marketplace of ideas," the triumph of truth over falsehood, the potential of civil society and the primacy of individual freedom over equality. It has been defined, articulated and interpreted by affluent white males for 200 years. What we understand as free speech, and how we see the protection of hate speech rationalized, are products of that tradition.

There is no reason to conclude prematurely that a feminist analysis of hateful speech would advocate punitive measures. But its interpretation has never been infused with the concerns of women because the liberal tradition has assumed that women exist and function in the private sphere where the First Amendment was never meant to and

accordingly, the liberal argument goes, should never intrude. By asserting the "personal is political," feminism attempts to challenge the traditional distinctions between the private and public sphere, between the political and nonpolitical realms. Blurring these distinctions enables feminism to offer an ongoing critique of rational modernity from which free speech should not be sequestered.

The weighing of free speech rights over equal protection and opportunity also has implications for women. The Fourteenth Amendment is an articulation that our society values equality for all. It is a fundamental right under the Constitution. But it continues to pale next to the First Amendment, even though compelling arguments exist suggesting hate speech consistently violates equal protection and opportunity. The heavy presumption in favor of free speech over equal opportunity and protection-- an ongoing narrative through judicial decisions -- assumes a pre-existing state of equality among individuals. Lawrence's work illuminates this problem for minorities in a way that is also relevant to women and, thus, opens up the possibility of a gendered analysis.[95] As he explains, the "fighting words" doctrine assumes that a hostile encounter involves "two persons of relatively equal power who have been acculturated to respond to face-to-face insults with violence.[96] A reason for the inadequate protection of the "fighting words" doctrine is because of the unlikelihood of women physically striking out at men in response to gendered insults. In doing so, women would be adding to the verbal threat, a threat of physical harm. It is also unlikely, as Lawrence notes, that epithets will occur in situations where the perpetrator is outnumbered or overmatched.[97] Therefore, a more likely response by the victim, female, minority or both, is silence and submission. "Fighting words doctrine, viewed in this way, is a paradigm based on a white male point of view,[98] [and] captures the 'macho' quality of male discourse."[99]

It is clear that with the tradition of critical analysis of the political and philosophical traditions that have given rise to the very tenets of free speech that hate speech critics now question, feminist theory would not only enrich a critique of hate

speech in representing the interests of female victims of hateful expression, but its intellectual tradition and critical analytical practices go to the core of the philosophical underpinning of the debates about free speech that set up the hate speech arguments. Without a thorough feminist analysis, our understanding of free speech -- with a history of gendered articulation and interpretation -- will continue to present itself as gender-neutral[100]

Linking Feminist Theory and Critical Race Theory: Towards An Integrated Perspective on Hate Speech

We are now left with the question of whether a feminist critique of hate speech should stand separate from critical race theory. It is clear that an analysis of hate speech will not be complete without engendering the critique. As such critical race theory must share the analytic space with feminist theory. Feminist legal theory is developing analyses of the traditional system of jurisprudence. Feminist political philosophy has well-developed critiques of the philosophical underpinnings of traditional liberal thought and its implications for gender equality. Women have concerns in common with other traditionally oppressed groups in the debates about hate speech and in that light, there is much to be valued in critical race theorists' critiques of hate speech. However, women also have a unique history of subjection, different and separate from minority oppression, that infuses an analysis of free speech, in general, and hate speech, in particular.

Equally, a distinctly separate feminist analysis would not represent the diversity of those affected by hate speech. It would exclude or subsume as the same the concerns of minorities. Many feminist approaches would diffuse the unique circumstances of minority women to address questions of color and patriarchy.[101] Alone, a feminist critique of hate speech would dilute the power of analysis and the impact of the argument. Discussions of hate speech won't be complete without a feminist perspective, just as they would be incomplete if missing the perspective of race or sexual orientation. An effective

analysis of hate speech -- including its role in perpetuating systems of oppression and its value as protected speech -- needs a holistic approach because of its interconnected nature as a means of vilification that crosses the boundaries of race, gender and sexual orientation. For the remainder of the essay I will the value of an intergrated approach to the analysis of hate speech.

Hate speech can be racist, sexist, homophobic and more. To offer a pure racial analysis disregards the element of gender and sexual orientation, and suggests a "totalizing telos"[102] that determines racial experience. To offer a pure feminist analysis disregards the perspective of race, sexual orientation and the plurality of feminist approaches. Minority women can be victims of hate speech because they are minority *and* women *and* lesbian. The way women see themselves can be an inseparable blend of numerous social and cultural identities. Their experiences and perspectives can vary at every level of analysis. It is oversimplistic and elitist to suggest that a feminist analysis *or* a racial analysis of hate speech is, in anyway, comprehensive. The challenge is to find ways to cross the borders of difference *not* to rationalize them away. The task for such a project is to acknowledge diversity but not weaken the force of the argument with multiple disparate separate approaches; to search for unity but not reduce the approach to monism.

What feminist theory offers is an example of the value of interdisciplinary analytical practices and techniques of criticism. Feminist theory is developing an analytical tradition that explodes the limiting boundaries of traditional legal thought It takes the tools of literary deconstruction to chip away at language, revealing its gendered use and associations with power. It reclaims history exposing its narrative, subjective nature and opens the door to new stories, of voices from the past not yet heard. It challenges the gendered origins of political theory and philosophy and questions the neutrality of terms like equality, justice, democracy, truth, rationality, freedom, autonomy, morality, individuality, political participation, and civil society. Feminist

theory looks at people, objects, concepts, ideas, institutions, traditions belief systems, identities and considers the *relationship between* them -- thus infusing analyses with considerations of power, all of which is crucial to understanding the dynamics of the social and psycho-social world. This practice of using interdisciplinary techniques to analyze the social and political world would also enrich the work of critical race theory and incorporate the useful critical techniques of Marxist analysis, and critical social theory, without reducing the analysis to a gender- or race- neutral focus on economic determinism or class conflict. In this way feminist theory is essential to and must be part of a complete analysis of hate speech.

To summarize, a feminist analysis of hate speech is essential to a progressive critique. What feminist has to offer is the interdisciplinary practice to infuse discussions of hate speech with numerous perspectives of social and political life, such as race, class sexuality, gender, sexual orientation, and so forth. I think feminism, because of this history of looking outward as well as inward for understanding of oppressive practices, has room to include other critical methods without compromising them or its own. Therefore, a feminist analysis of hate speech will bring into the appropriate focus, women as victims of vilification, and then provide the opportunity for incorporate the influences of race and class that have remained the focus of critical legal studies and critical race studies.

Endnotes

[1]Organizations such as the National Institute Against Prejudice and Violence, the Anti-Defamation League, and the National Gay and Lesbian Task Force have documented an increase in the number of incidents of harassment in recent years. *See* Reginald Wilson, *Racism on the Campus*, New Politics, Summer 1991, at 84.

[2]There was an increase from 1,389 to 1,822 reported incidents in this one year period. This, of course, does not account for the many unreported incidents of harassment. *See* Mark Brown, *Hate Crimes Up, Gay Group Says*, Rocky Mtn. News, Mar. 26, 1992, at 26.

[3]Hate Crimes Act, Pub. L. No. 101-275, 104 Stat. 140 (codified as 28 U.S.C.A. 534 (West Supp. 1991)).

[4]*See* Massaro, *Equality and Freedom of Expression: The Hate Speech Dilemma*, 32 WILLIAM AND MARY L. REV. 211 (1991).

[5]Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2331 (1989).

[6]*See* Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 449-50.

[7]Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133, 135-36 (1982).

[8]R.A.V. v. St. Paul, 112 S. Ct. 2538.

[9]St. Paul, Minn. Legis. Code ' 292.02 (1990).

[10]It is revealing that the statistics are not broken down by gender, thus leaving the reader unaware that these crimes may also be directed at black women, Jewish women, lesbians and so forth.

[11]*Hatred Turns Out Not To Be Color-Blind*, Time, Jan. 18, 1993, at 22.

[12]*Attacks on Gays Increase in Colorado*, The Washington Times, Dec. 24, 1992, at A6.

[13]*Gay Anti-Bias Bill Vetoed*, The Rocky Mountain News, May 5, 1993, at A32.

[14]Mark W. Wright, *Anti-Semitic Actions Decline But Personal Threats Increase*, Atlanta Journal and Constitution, Feb. 2, 1993, at A5.

[15]*See* People for the American Way, Hate In the Ivory Tower, 1991.

[16]Arthur Schlesinger, Jr., *The American Creed: From Dilemma to Decomposition*, New Progressive Quarterly, Summer 1991, at 20..

[17]*See* DAVID HAMLIN, THE NAZI/SKOKIE CONFLICT 133 (1980).

[18]Nat Hentoff, *The Colleges: Fear, Loathing, and Suppression*, Village Voice, May 5, 1990, at 20. It is important to note that there is currently no loveloss between the ACLU and Nat Hentoff. He has been highly critical of the debates within the ACLU about the appropriateness of speech codes and sexual harassment codes. The South California ACLU justifies their adoption of a speech code by claiming to be"the most progressive of the ACLU's; more in tune with urban problems. Civil rights are naturally better represented because of the urban composition of their board. They are more open to balancing First and Fourteenth Amendments rights." One Southern California ACLU member commented on the Hentoff's representation of the ACLU by saying, "Hentoff is a maniac." Telephone conversation with Tessa DeRoy, Southern California ACLU, (April 30, 1993). Both the Northern and Southern California policies concerning harassment on college campuses are on file with the author.

[19]Nat Hentoff, *What's Happening to the ACLU?* Village Voice, May 22, 1990, at 20. Not also that since the publication of this article, the national ACLU has also released a policy statement and a briefing paper on hate speech in an attempt to deliniate the differences protected forms of hateful speech and unprotected forms of intimidation, harassment and invasion of privacy. *See* Free Speech and Bias on College Campuses, ACLU Policy Statement, on file with author; *Hate Speech on Campus*, ACLU Briefing Paper, No. 16, on file with author.

[20]Overbroad is defined as

> requirement that a statute be invalidated if it is fairly capable of being applied to punish people for constitutionally protected speech or conduct. A law is void on its face if it

'does not aim specifically at evils within the allowable area of government control, but ... sweeps within its ambit other activities that constitute an exercise of protected expressive or associational rights. *Thomhill v. Alabama*, 310 U.S. 88, 97, 60 S. Ct. 296, 84 L.Ed. 460. A plausible challenge to a law as void for overbreadth can be made only when (1) the protected activity is a significant part of the law's target, and (2) there exists no satisfactory way of severing the law's constitutional from its unconstitutional applications so as to excise the latter clearly in a single step from the law's reach.

BLACK'S LAW DICTIONARY 994 (5th ed. 1979).

[21]R.A.V. v. St. Paul, 112 S. Ct. 2538.

[22]Doe v. University of Michigan, 721 F. Supp. 852 (E.D. Mich. 1989). The relevant part of the code stated:

Any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status, and that
a. Involves an express or implied threat to an individual's academic efforts, employment, participation in University sponsored extra-curricular activities or personal safety; or
b. Has the purpose or reasonably foreseeable effect of interfering with an individual's academic efforts, employment, participation in University sponsored extra-curricular activities or personal safety; or
c. Creates an intimidating, hostile, or demeaning environment for educational pursuits, employment or participation in University sponsored extra-curricular activities. Id. at 856.

A similar section of the code addressed harassment of a sexual nature.

[23]UWM Post v. Board of Regents of the University of Wisconsin System, 774 F. Supp. 1163 (E.D. Wis. 1991).

[24]*See* Lawrence *supra* note 6 at 449-50.

[25]The restrictive part of the code is as follows:

4. Speech or other expression constitutes harassment by personal vilification if it:
a) is intended to insult or stigmatize an individual or a small number of individuals on the basis of sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin; and
b) is addressed directly to the individual or individuals whom it insults or stigmatizes; and
c) makes use of insulting or "fighting" words or non-verbal symbols.

See id. at 450-51.

[26]The factors include "sex, race, color, handicap, religion, sexual orientation, . . . national and ethnic origin." Stanford University, Fundamental Standard Interpretation: Free Expression and Discriminatory Harassment, *quoted in id.* at 451.

[27]The Wisconsin Board of Regents intitally supported and recommended to the state legislature a new code intended not to be overbroad as developed by a special university task force. After the code was adopted by the state legislature, the Regents reversed their support and have now asked the rule be repealed. Until the repeal is published, the rule is not actively being enforced. Telephone interview with Mary Ann Yodelis Smith, Vice Chancellor, University of Wisconsin Centers (Oct. 27, 1992). It has been suggested that the repeal occurred because of the decision in *R.A.V. v. Minnesota*. Telephone interview with Lynn Decker, National offices of the ACLU (April 20, 1993).

[28]Schenck v. United States, 249 U.S. 47, 52 (1919).

[29]BLACK'S LAW DICTIONARY 317 (4th ed. rev. 1968).

[30]Miller v. California, 413 U.S. 15 (1973).

[31]Robert C. Post, *Racist Speech, Democracy , and The First Amendment*, 32 WILLIAM AND MARY L. REV. 267, 272 (1991).

[32]MASS MEDIA LAW 244 (Marc A. Franklin & David A. Anderson eds.,4th ed. 1990).

[33]*See*, Arcand v. Evening Call, 567 F.2d 1163 (1977).

[34]Beauharnais v. Illinois, 343 U.S. 250 (1952).

[35]MASS MEDIA LAW 247 (Marc A. Franklin & David A. Anderson eds.,4th ed. 1990).

[36]Nadine Strossen, *Regulating Racist Speech on Campus: A Modest Proposal?* 1990 DUKE LAW JOURNAL 484, 518 (footnote omitted).

[37]Matsuda, *supra* note 5, at 2358, as quoted in Post, *supra* note 31 at 273.

[38]Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[39]*See, e.g.*, Karlan v. City of Cincinnati, 416 U.S. 924 (1974); Rosen v. California, 416 U.S. 924 (1974); Kelly v. Ohio, 416 U.S. 923 (1974); Lucas v. Arkansas, 416 U.S. 919 (1974); Brown v. Oklahoma, 408 U.S. 901 (1972); Lewis v. New Orleans, 408 U.S. 913 (1972); Rosenfeld v. New Jersey, 408 U.S. 901 (1972).

[40]405 U.S. 518 (1972).

[41]Strossen, *supra* note 36, at 509.

[42]*See* LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-18, at 929 & n.9 (2d ed. 1988); Strossen, *supra* note 36, at 509.

[43]*See* Cohen v. California, 403 U.S. 15 (1971).

[44]Kent Greenawalt, *Insults and Epithets: Are They Protected Speech?* 42 RUTGERS L. REV. 287, 301.

[45]*See, e.g.*, Stephen W. Gard, *Fighting Words as Free Speech*, 58 WASH. U.L.Q. 531 (1980).

[46]Justice Black and Justice Douglas are both considered qualified absolutists. Black said that no law meant no law "without any ifs, buts, or whereases." *See* Beauharnais v. Illinois, 343 U.S. 250, 275 (1952) (Black, J., dissenting). Justice Douglas said in 1973, "The ban of 'no' law that abridges freedom of the press is in my view total and complete." *See* Columbia Broadcasting System, Inc. v. Democratic Nat. Committee, 412 U.S. 94, 156 (1973) (Douglas, J., concurring).

[47]Richard Delgado, *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 NW. U. L. REV. 343, 347 (1991)

[48]Delgado, *supra* note 7 at 133.

[49]*Id.* at 149-58 (1982).

[50]Matsuda, *supra* note 5 at 2321.

[51]*Id.* at 2323.

[52]*Id.* at 2357.

[53]Lawrence, *supra* note 6 437.

[54]*Id* at 452.

[55]*Id.* (footnote omitted).

[56]*Id.*

[57]*Id.*

[58]*Id.* at 453.

[59]*Id.*

[60]347 U.S. 483 (1954).

[61]Lawrence *supra* note 6 at 462.

[62]*Id.* at 463.

[63]*Id.* at 450.

[64]Massaro, *supra* note 4 at 220.

[65]*Id.* at 255.

[66]*Id.*

[67]*Id.* at 258

[68]*Id.* at 265.

[69]More work on hate speech is emerging. A conference was recently held in Chicago that specifically addressed hate speech and pornography. This may be the first attempt to create a bridge between feminist and critical race theory Pofessor Richard Delgado commented, "This was a historic moment that saw feminists and racial minorities come together. [...] Before it seemed as if gains for one could only be made at the expense of the other. This time they linked arms in a common venture against a hate directed at both of them." Isabel Wilkerson, *Foes of Pornography and Bigotry Join Forces*, N.Y.

Times, Mar. 12, 1993, at B16 col 3. Also, a book on hate speech is forthcoming from Westview Press, but the focus appears to remain on critical race theory.

[70]For an extensive listing of feminist analysis of the law, *see* Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990).

[71]Scales, *supra* note 56 at 1378.

[72]Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS, 635, 638 (1983).

[73]Minow, *supra* note 75 at 13.

[74]Reed v. Reed, 404 U.S. 71 (1971) (first Supreme Court case addressing issues of equal protection).

[75]For a descrption of the development of this approach, *see generally* Nadine Taub & Elizabeth M. Schneider, *Women's Subordination and the Role of Law*, in The Politics of Law 151 (David Kairys ed. rev. ed. 1990).

[76]For a listing of articles addressing this debate, *see* Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*. 95 YALE L.J. 1371 (1986).

[77]*See* CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 215-234 (1989); *see generally*, Mary Joe Frug, *Progressive Feminist Legal Scholarship: can We Claim "A Different Voice"?* 15 HARV. WOMEN'S L. JOURN. 37 (1992); Judi Greenberg, Martha Minow & Elizabeth Schneider, *Contrdiction and Revision: Progressive Feminist Legal Scholars Respond to Mary Joe Frug*, 15 HARV. WOMEN'S L. JOURN. 65 65-67 (1992).

[78]MARTHA MINOW MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW (1990).

[79] Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses in* THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 51, 64 (Chandra Talpade Mohanty, Ann Russo & Lourdes Torres eds., 1991)

[80]ELIZABETH SPELMAN INESSENTIAL WOMEN (1990).

[81]*Id.* at 115. For additional discussion of the intersection of race, class gender and sexuality, *see also* Deborah King, *Multiple Jeopardy: The Context of a Black Feminist Ideology*, *in* FEMINIST FRAMEWORKS 220 (Alison M Haggar & Paula S. Rothenberg eds., 3d ed. 1993).

[82]Minow, *supra* note 78 at 194. For historical background on women, law and the public/private split, *see* Nadine Taub & Elizabeth M. Schneider, *Women's Subordination and the Role of Law in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 151 (David Kairys ed., Rev. ed. 1990).

[83]MARK A GRABER, TRANSFORMING FREE SPEECH, 17-50 (1991).

[84]J.M. Balkin, *Some Realism About Pluralism: Legal Realist Approaches to the First Amendment*, 1990 DUKE LAW JOURN. 375, 380.

[85]*Id.*

[86]*Id.* at 381 (footnote omitted).

[87]Balkin says, for example, that "regulation of campaign finance is necessary because what passes for free speech is really more like unregulated economic power that is used to influence (and corrupt) the political process)." *Id.* at 378. *See also*, Buckley v. Valeo, 424 U.S. 1 (1976).

[88]Balkin, *supra* note 84 at 380.

[89]*Id.* at 381.

[90]Scales, *supra* note 76 at 1400.

[91]Minow, *supra* note 78 at 194.

[92]Jean Stefancic, *Listen to the Voices: An Essay on Legal Scholarship, Women, and Minorities*, 141,142 Symposium of Law Publishers (1991).

[93]MacKinnon, *supra* note 77 at 290n18.

[94]*See for example*, ALISON M. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE 27-50, 173-206 (1988); SUSAN MOLLER OKIN, WOMEN IN WESTERN POLITICAL THOUGHT 197-230 (1979); CHRISTINE DISTEFANO, CONFIGURATIONS OF MASCULINITY 144-186 (1991); ANNE PHILLIPS, ENGENDERING DEMOCRACY (1991).

[95]Lawrence, *supra* note6 at 454.

[96]*Id.*

[97] *Id.* at 454n94.

[98] *Id.* at 454 (footnote omitted).

[99] *Id.* at 454n93.

[100] I could qualify this statement with Catharine MacKinnon's work on pornography, but I think she is trying to define and locate the issue of pornography outside the scope of First Amendment consideration.

[101] Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics in* FEMINIST LEGAL THEORY 57,72 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991).

[102] BELL HOOKS, BLACK LOOKS 46 (1992).